



## **Australian Government**

Australian Government response to the  
Senate Rural and Regional Affairs and Transport References  
Committee report:

Foreign investment and the national interest

August 2018

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## Response to the Committee's Recommendations

### **Recommendation 1**

The committee recommends that the government further strengthen Australia's tax regulations in order to protect against the erosion of Australia's tax revenue. In particular, the government should develop more rigorous approaches to prevent tax revenue leakage that may occur due to the business structures and practices used by foreign investors in relation to:

- transfer pricing;
- capital gains;
- passive income;
- thin capitalisation; and
- any other relevant tax mechanisms.

The Australian Government **supports** this recommendation.

The Government remains committed to tackling tax avoidance and is continuing to take strong action to protect the integrity of the Australian tax system. On 9 February 2017, the Government introduced legislation for a number of measures into Parliament which include:

- the new Diverted Profits Tax, which will target significant global entities (entities with global income of \$1 billion or more) that are using contrived arrangements to divert Australian profits offshore;
- increased penalties on significant global entities that fail to lodge their tax documents on time and that make false or misleading statements; and
- updating Australia's transfer pricing rules to ensure that Australia's rules remain best practice.

These measures build upon other major initiatives the Government implemented to tackle multinational tax avoidance and preserve the integrity of our tax base. These include:

- in 2014, enacting legislation to significantly tighten the thin capitalisation rules to stop multinational companies claiming excessive debt deductions and to close loopholes to ensure the integrity of the foreign non-portfolio dividends exemption;
- the new Tax Avoidance Taskforce to strengthen the ATO's capacity to identify and crack down on tax avoidance;
- the Multinational Anti-Avoidance Law, designed to stop significant global entities from artificially avoiding a taxable presence in Australia;
- doubling the penalties for significant global entities that enter into tax avoidance and profit shifting schemes;
- country-by-country reporting which requires significant global entities to report to the ATO on their global operations including income derived and tax paid in each country in which they operate;

- from 1 July 2016, a 10 per cent non-final withholding tax was introduced for payments made to foreign tax residents disposing of certain taxable Australian real property valued at \$2 million or more. This change supports the integrity of the tax system and the operation of Australia's foreign resident capital gains tax regime by addressing the low levels of compliance by foreign investors with their Australian capital gains tax obligations. This withholding tax was strengthened from 1 July 2017 by increasing the withholding rate to 12.5 per cent and reducing the property value threshold to \$750,000 or more, in order to increase the number of properties caught by the regime; and
- in 2015 Australia and Germany signed a Double Taxation Agreement. This Agreement adopts many of the OECD/G20 Base Erosion and Profit Shifting (BEPS) recommendations.

The Government has developed a package of measures to address the sustainability and tax integrity risks posed by stapled structures and limit the broader concessions for foreign investors. A key element of the package is applying a final withholding tax set at the corporate tax rate to distributions derived from trading income that has been converted to passive income using a Managed Investment Trust. Another key element of the package is amending the thin capitalisation rules to prevent foreign investors from using multiple layers of flow-through entities to convert their trading income into favourably taxed interest income.

The Government is also continuing to progress further measures, which include actions to:

- adopt the OECD Multilateral Instrument;
- deny foreign tax residents access to the capital gains tax main residence exemption;
- tackle hybrid mismatch arrangements;
- better protect tax whistleblowers; and
- consult on the new OECD mandatory disclosure rules.

In addition, since 22 February 2016, standard tax conditions have been applied to foreign investment approvals for business proposals to ensure companies operating in Australia comply with Australia's tax law. Entities operating in Australia are expected to understand Australia's regulatory environment and meet all obligations imposed under Australian taxation law. Where companies fail to comply with the conditions, the Treasurer has powers to take action, including ordering divestment of Australian assets.

### **Recommendation 2**

The committee also recommends that the government continue to work towards international reforms to address tax revenue leakage, including issues relating to transfer pricing. The committee notes the current progress by the government, the OECD and the G20 in this area and urges the government to continue pursuing international taxation reforms through these organisations.

The Australian Government **supports** this recommendation.

The Government remains committed to progressing the G20/OECD's BEPS recommendations, which aim to ensure that profits are taxed where the underlying economic activities take place and where value is created. Where required, the Government has already undertaken action on the recommendations, such as introducing legislation into Parliament to

align Australia's transfer pricing rules with the G20/OECD BEPS recommendations, or there are already measures in place to address the recommendation.

However, the overall success of the BEPS agenda depends on the willingness and capacity of each country to take strong coordinated action. The Government is continuing to encourage other countries to adopt the BEPS recommendations and is working with the OECD to monitor and support the implementation of the BEPS package through avenues such as the BEPS Inclusive Framework.

### **Recommendation 3**

The committee recommends that the government establish an Independent Commission of Audit into Agribusiness, or similar body, to develop a comprehensive policy approach to Australian agriculture. Furthermore, the government should use this inquiry's interim report and final report, and the submission from Mr Farley (referred to above) as the basis for consultations with industry stakeholders aimed at establishing the terms of reference and general structure of the commission (including relevant commissioners and powers for information gathering).

The Australian Government **does not support** this recommendation.

On 4 July 2015, the Government released the *Agricultural Competitiveness White Paper* which provides a comprehensive and integrated agricultural policy and delivers on the Government's commitment to a strong and prosperous sector.

### **Recommendation 4**

The committee recommends that, given the future challenges arising from the global food task and the changing approaches to the regulation of foreign investment that have occurred in countries comparable to Australia, the government should commission an independent and wide-ranging review of Australia's foreign investment regulatory framework. In particular, the review should examine the ways that the government can ensure that foreign investments in Australian agriculture:

- are made on a genuinely commercial basis;
- do not distort the capital market;
- do not distort the trade in agricultural products; and
- compete fairly with domestic Australian farmers and agribusinesses.

The review should take into account the issues raised, and the recommendations made, in this report and the committee's interim report of November 2012.

The review should be used as a reference point for the government's strengthening of the national interest test, improvement of relevant compliance regimes, and the other policy and legislative changes recommended in this report.

The Australian Government **does not support** this recommendation.

The Government has already taken a number of steps to strengthen the screening arrangements that apply to foreign investment in the agricultural sector.

The foreign investment framework seeks to strike an appropriate balance between maintaining community confidence in foreign investment, protecting the national interest and ensuring that Australia remains an attractive destination for foreign investment by providing certainty for investors.

Australia's Foreign Investment Policy (the Policy) sets out the factors that are considered under the national interest test. Noting its significance and importance, the Government considers a set of factors specific to the agricultural sector.

When examining a foreign investment proposal in the agricultural sector, the Government considers the effect of the proposal on:

- The quality and availability of Australia's agricultural resources, including water;
- Agricultural production and productivity;
- Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
- Biodiversity; and
- Employment and prosperity in Australia's local and regional communities.

These factors are in addition to the other factors considered more broadly under the national interest test, including national security, competition, taxation, impact on the economy and the community, the character of the investor, and for foreign government investors, the commerciality of the investment.

#### **Recommendation 5**

The committee recommends that the ABS does not conduct future ABS agricultural surveys on foreign investment. The committee considers that the national register for foreign ownership of agricultural land should be the primary mechanism for collecting and publishing information about foreign investment in Australian agriculture (as per the recommendations below).

The Australian Government **notes** this recommendation.

The ABS is currently reviewing its statistical forward work program for 2017-18 and beyond, and will assess the future of the Agricultural Land and Water Ownership Survey (ALWOS) as part of that process.

### **Recommendation 6**

The committee recommends that when establishing the agricultural land register, the government conduct an initial stocktake of foreign ownership of agricultural land, agribusiness and water entitlements. In addition to numbers of businesses, land size and volume of water entitlements, the value of foreign investment acquisitions should be captured. The initial stocktake should be comprehensive, as far as possible consistent across states, and take into account complex company structures including foreign trusts, "shell companies", ownership of agricultural assets by foreign mining companies, and debt structuring and ultimate liability.

Furthermore, on the basis of this initial stocktake, the government should commission independent modelling of the level of foreign investment in Australian agriculture in 20 years' time if current trends and regulatory arrangements are assumed to remain. The modelling should also include estimated costs to the industry over the same period based on current constraints to domestic capital investment in Australian agriculture. Finally, the modelling should have regard to the future opportunities provided by the growing global food task over this period.

### **Recommendation 7**

The committee recommends that the ongoing information collected in the register include the information that the committee recommended be included as part of the stocktake of foreign ownership (as per recommendation 6).

The Australian Government **notes** these recommendations.

A comprehensive stocktake of agricultural land held by a foreign person was conducted between 1 July 2015 – 29 February 2016 to enable existing foreign person land holders to register their land pursuant to the *Register of Foreign Ownership of Agricultural Land Act 2015\** (the Register). During this time, the ATO used data matching to contact investors who may have met the definition of foreign person and who held Australian land that may have met the definition of agricultural land.

Following the stocktake period, foreign investors have been required to notify the ATO within 30 days if they:

- are a foreign person starting to hold agricultural land; or
- are a foreign person ceasing to hold agricultural land; or
- become a foreign person while holding agricultural land; or
- cease to be a foreign person while holding agricultural land; or
- are a foreign person holding land that becomes agricultural land; or
- are a foreign person holding land that ceases to be agricultural land.

The Register collects information such as the name and contact details of the owner, location and size of the property, country of origin of the purchaser and their Australian Business Number or Australian Company Number.

The *Register of Foreign Ownership of Agricultural Land Amendment (Water) Act 2016* amended the *Register of Foreign Ownership of Agricultural Land Act 2015\** to require all

water entitlements held by a foreign person to be registered with the ATO. The requirement to register commenced on 1 July 2017.

A stocktake period was conducted between 1 July 2017 and 30 November 2017. A foreign person is required to register a water entitlement interest if they hold an irrigation right, a right conferred by or under a law of a State or Territory to hold or take water from a water resource in Australia, or a contractual right to another person's water entitlement interest.

**Recommendation 8**

The committee recommends that the register include divestments as well as investments. This will ensure that the information from the register remains current and can reflect changes over time.

The Government **supports and has enacted** this recommendation.

Foreign investors are required to notify the ATO within 30 days if they:

- are a foreign person starting to hold agricultural land; or
- are a foreign person ceasing to hold agricultural land; or
- become a foreign person while holding agricultural land; or
- cease to be a foreign person while holding agricultural land; or
- are a foreign person holding land that becomes agricultural land; or
- are a foreign person holding land that ceases to be agricultural land.

The same trigger events have been included in respect of water entitlements.

**Recommendation 9**

The committee recommends that participation in the register be a legal requirement for foreign investors and that appropriate mechanisms for compliance apply in cases where such participation is avoided.

The Government **supports and has enacted** this recommendation.

Under the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*, foreign persons who fail to notify of their agricultural land holdings or relevant water entitlements will be subject to penalties under tax law.

**Recommendation 10**

The committee recommends that the register not use the current definition of 'rural land' in the FATA. Instead the definition adopted should be that which results from the update of 'rural land' as per recommendation 25. This would maintain consistency with the regulatory framework for foreign investment in Australian agriculture.

The Government **supports and has enacted** this recommendation.

The *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015* introduced a definition of 'agricultural land' to replace the definition of rural land in the *Foreign Acquisitions and Takeovers Act 1975* (the FATA).



Agricultural land is land in Australia that is used, or could reasonably be used, for a primary production business. This includes land which is partially used for a primary production business, or land where only part of the land could reasonably be used for a primary production business.

The definition of agricultural land that is now used within the FATA is also used for the purposes of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*.

**Recommendation 11**

The committee recommends that there be no minimum threshold for reporting and that all foreign investment should be captured in the agricultural land register. However, this data should be collected in a manner that can clearly delineate foreign investments in terms of value and business size.

The Australian Government **notes** this recommendation.

The requirement to register in compliance with the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* does not rely on a minimum threshold. All foreign persons who own agricultural land are required to register irrespective of the size of their investment.

**Recommendation 12**

The committee recommends that the register's data be held in a manner that is centralised and can provide comprehensive information about all foreign ownership that is recorded.

The Australian Government **notes** this recommendation.

The Commissioner of Taxation is required to report to the Treasurer on the operation of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* annually, as well as publish aggregate statistics on a website. The report does not release information which could be used to identify an individual or entity.

**Recommendation 13**

The committee recommends that levels and trends of foreign ownership of land, agribusiness and water entitlements should be published annually by the national register for foreign ownership of agricultural land. Aggregate level data about the respective value and level of interest of foreign government investors and private foreign companies should be included. The data should also be made available in categories such as state, sub-industry (ANZSIC levels), water catchment areas, and local shires.

**Recommendation 14**

The committee recommends that country of origin of all foreign government investors and specific foreign government investments should be published annually by the national register for foreign ownership of agricultural land.

The Australian Government **notes** these recommendations.

The first report from the Foreign Ownership of Agricultural Land Register was released in September 2016. The first report of aggregated data collected through the Register included a breakdown of agricultural land that was foreign owned by size, by state and territory, by land use and country of investor.

From 1 July 2017 a foreign person must register their water holdings. The Commissioner of Taxation will be required to provide a report on the findings from this Register after 30 June each year, consistent with reporting timeframe and approach taken for the *Register of Foreign Ownership of Agricultural Land Act 2015*\*. The Report will contain aggregated data about the water entitlements that are foreign owned by volume, state and territory, water source and country of investor.

**Recommendation 15**

The committee recommends that, in order to prevent possible disincentives for foreign investment, the country of origin details for private foreign companies should be published by the national register for foreign ownership of agricultural land at aggregate levels only. However, country of origin details for specific private foreign investments should be made available to parliamentarians, parliamentary committees, and any relevant government agency upon request.

The Australian Government **does not support** this recommendation.

The Commissioner of Taxation is required to report to the Treasurer on the operation of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (the Register), as well as publish aggregate statistics on a website of the country of investors. The report must not release information which could be used to identify an individual or entity.

The *Taxation Administration Act 1953* broadly makes it an offence for taxation officers to disclose protected information (including information concerning the Register) to an entity, which includes parliamentarians, parliamentary committees, and government agencies.

### **Recommendation 16**

The committee recommends that, in line with recommendation 4, the government develop a stronger, more rigorous and more transparent system for examining cases of foreign investment in Australia, including Australian agriculture. Particular focus should be made on forensically examining:

- company structures (including management relationships in joint Australian/foreign ventures);
- the relationship between a foreign government's acquisitions strategy (such as food security) and the commercial operation of their subsidiary businesses in Australia; and
- ways of setting clear and auditable ongoing undertakings that are in the 'national interest'.

To assist foreign investors in their applications, the Government has provided general guidance on the national interest factors that are typically considered when assessing foreign investment proposals. These include: national security, competition, other Australian Government policies (including tax), impact on the economy and the community and the investor's character.

The Government considers the same broad factors when considering whether an investment by a foreign government investor or a private investor is contrary to the national interest.

However, where a proposal involves a foreign government investor, the Government also considers the commerciality of the investment. This includes assessing whether the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives

The Government considers the current framework provides flexibility to consider proposals on a case-by-case basis. This flexibility is fundamental to the operation of the foreign investment framework because the national interest can change over time.

### **Recommendation 17**

The committee recommends that the government amend the FATA to create more effective compliance mechanisms for companies that do not rigorously and continually adhere to the undertakings and conditions of FIRB approval. In addition, the government should develop further mechanisms to improve compliance with FIRB policy and decisions. Any new compliance regime should provide the Treasurer and relevant officials with a wide variety of compliance tools, in addition to forced divestiture, so that compliance matters can be resolved more efficiently and in proportion to the severity of any breaches.

The Australian Government **supports and has enacted** this recommendation.

The Government is ensuring that all foreign investors are compliant with the *Foreign Acquisitions and Takeovers Act 1975*, and that those foreign investors who are non-compliant are penalised accordingly.

The Act provides a number of powers to enforce the foreign investment rules. Criminal and civil penalties may be applied for breaches of the Act, including where a foreign person takes

an action that has not received prior foreign investment approval or breaches a condition of a foreign investment approval. For more significant breaches, an investor may be ordered to divest (by requiring the parties to sell shares, assets or property). Civil penalties can also be applied to third parties who knowingly assist foreign investors to break the rules.

There are additional civil penalties in relation to residential land, including requiring an investor to forfeit capital gains made on divestment of a property. Less significant breaches of the foreign investment rules in relation to residential real estate may be addressed by way of an infringement notice (instead of a higher civil penalty).

### **Recommendation 18**

The committee recommends that the government increase the transparency and public awareness of the national interest test so that it has the following two clear aims:

- providing precise and unambiguous instructions to prospective foreign investors about their obligations to FIRB and the Treasurer, and how the national interest test is conducted; and
- building the confidence of the public, FIRB stakeholders and the Parliament that the national interest test is being rigorously and fairly applied and takes in to account all relevant factors including impacts on rural communities and the agriculture industry.

The Australian Government **notes** this recommendation.

The foreign investment review framework is set by the legislative framework and supported by Australia's Foreign Investment Policy (the Policy) and Guidance Notes on the specific application of the law.

The legislative framework includes the *Foreign Acquisitions and Takeovers Act 1975* (Act) and the *Foreign Acquisitions and Takeovers Fees Impositions Act 2015* (Fees Imposition Act) and their associated regulations.

- The Act allows the Treasurer to review foreign investment proposals that meet certain criteria. The Treasurer has the power to block foreign investment proposals or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest.
- The Fees Imposition Act and its Regulation set the fees for foreign investment applications and notices.
- The Policy outlines the Government's approach to administering the foreign investment framework, including national interest considerations. These national interest considerations include: national security, competition, other Australian Government policies (including tax), impact on the economy and the community and the investor's character. When examining foreign investment proposals in the agricultural sector, the Government additionally typically considers the effect of the proposal on:
  - the quality and availability of Australia's agricultural resources, including water;
  - land access and use;
  - agricultural production and productivity;

- Australia’s capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
- biodiversity; and
- employment and prosperity in Australia’s local and regional communities.

The Policy provides an overview of the framework, and should be read in conjunction with the legislation.

Guidance Notes provide more specific information on how the foreign investment framework applies for different acquisitions and investors. They are provided for guidance only and should be read in conjunction with the legislation.

**Recommendation 19**

This recommendation relates to water entitlement buybacks conducted under the government's Restoring the Balance Program and the Sustainable Rural Water Use and Infrastructure Program as part of the water recovery process under the Murray-Darling Basin Plan. The committee recommends that any such water buybacks that are from companies that have had acquisitions subject to FIRB review (including Cubbie Station) should be forwarded to the Australian National Audit Office (ANAO) for review. The ANAO should publicly report on whether water buybacks in such cases represent value-for-money for Australian taxpayers. The committee accepts that any review by the ANAO would occur after a water buyback has occurred.

The Australian Government **does not support** this recommendation.

The FIRB is responsible for examining foreign investment proposals and advising on the decision maker on the national interest implications. As relevant, FIRB consults with other Departments and agencies on a specific application.

Currently, foreign acquisitions of interests in water are not directly screened under Australia’s foreign investment screening framework, but may be part of screening other types of investments. Acquisitions of land or other agricultural assets which may have water attached to them may be screened through the agricultural land screening requirements, or through the acquisition of securities or business assets.

From 1 July 2017 a foreign person must register their water holdings. The Commissioner of Taxation will be required to provide a report on the findings from this Register after 30 June each year, consistent with reporting timeframe and approach taken for the *Register of Foreign Ownership of Agricultural Land Act 2015\**. The Report will contain aggregated data about the water entitlements that are foreign owned by volume, state and territory, water source and country of investor.

**Recommendation 20**

The committee recommends that the threshold for private foreign investment in agricultural land be lowered to \$15 million.

**Recommendation 21**

The committee also recommends that once cumulative purchases of \$15 million of private investment in agricultural land has been reached by a private business or associated entities, any further investment by that business or entity be required to receive FIRB approval regardless of value.

The Australian Government **supports and has enacted** these recommendations.

**Recommendation 22**

The committee recommends that FIRB reviews any proposed foreign acquisition of an agribusiness where investment exceeds 15 per cent or more in an agribusiness valued at \$248 million (indexed annually) or exceeds \$54 million.

The Australian Government **notes** this recommendation.

Since 1 December 2015, foreign persons must get approval before acquiring a direct interest in an agribusiness where the value of the investment is more than \$55 million (regardless of the value of the agribusiness). A direct interest is generally defined as an interest of 10 per cent or more.

For foreign government investors, a \$0 (nil) threshold applies.

**Recommendation 23**

The committee recommends that the zero trigger required for approval by FIRB for any purchase of agricultural land or an agribusiness by a state owned enterprise will continue to apply.

The Australian Government **supports and has enacted** this recommendation.

**Recommendation 24**

The committee recommends that Australia's Foreign Investment Policy (AFIP) be amended to clearly define the "interests of local economies" and the "interests of local communities". Furthermore, there should be a greater requirement for FIRB to take into account these local interests in the assessment of foreign purchases of agricultural assets.

The Australian Government **notes** this recommendation.

The foreign investment framework seeks to strike an appropriate balance between maintaining community confidence in foreign investment, protecting the national interest and ensuring that Australia remains an attractive destination for foreign investment by providing certainty for investors.

The national interest test is set out in the Policy and includes considering the impact of the investment on the economy and the community. The Policy sets out specific factors for considering investments in the agricultural sector. This includes the effect of the proposal on employment and prosperity in Australia's local and regional communities.

**Recommendation 25**

The committee recommends that the government update the definitions of 'Australian rural land' and 'Australian urban land' in the FATA with the aim of more accurately reflecting the common understandings of these terms.

The Australian Government **supports and has enacted** this recommendation.

**Recommendation 26**

The committee recommends that the Australian government commission an extensive and independent review of possible incentives and barriers for long-term capital investment in major Australian agricultural developments by Australian investors, including superannuation funds and other domestic investors with long-term horizons. The review should make a comparative analysis with the incentives for foreign investors to invest in major Australian agricultural developments.

Based on the findings of the review, the Australian government should develop, publish and implement policies to encourage long-term domestic capital investment in Australian agriculture. The policies should specifically identify opportunities for Australian superannuation funds and other domestic investors with long-term horizons and where appropriate, the policies should be coordinated with relevant state governments and agencies.

The Australian Government **notes** this recommendation.

Through the foreign investment screening process, the Government is ensuring that the sale of Australian agricultural land and agribusinesses is consistent with the national interest. In particular, the Government seeks to ensure that Australian investors are afforded the opportunity to participate in the sales process for agricultural land and agribusinesses.

Whether superannuation funds invest in long term capital assets, including Australian agricultural assets, is a matter for the fund's trustees, who have a fiduciary duty to make

investment decisions in the best interests of all members of the fund. Trustees have to formulate and give effect to an investment strategy that considers, among other things, the risk and return, diversification and liquidity of investments.

The Government will monitor developments in this area to ensure Australian investors, including superannuation funds, continue to be able to invest in Australian agriculture should they choose to do so.

**Recommendation 27**

The committee recommends that, as part of the review and policies established under recommendation 26, and with appropriate consultation with the banking industry, the agricultural sector and other interest parties, the government should consider appropriate avenues for improving access for Australian agricultural businesses to domestic finance from Australian banks.

The Australian Government **notes** this recommendation.

The terms of reference of the Agricultural Competitiveness White Paper, released in July 2015, included an investigation into farm debt and access to finance. As a result, White Paper initiatives implemented to assist farmers with aspects of debt financing included the removal of legislative restrictions placed on financial institutions preventing Farm Management Deposit (FMD) accounts being used as a farm business loan offset. This allows farmers to use their FMDs to reduce the interest costs on business debt and improve their cash flow.

More broadly, the White Paper committed \$2.5 billion over 10 years for concessional loans to assist farmers to access the finances they need. The Government currently provides three concessional loans products under the Farm Business Concessional Loans Scheme. This scheme opened for applications on 1 November 2016, with \$250 million available in 2016-17 and again in 2017-18.

Since the provision of these concessional loans, there has been evidence that financial institutions have bettered their existing interest rates for their customers. This has been done in a bid to retain business and has leveraged positive benefits from the initial government intervention.

The Government is also establishing a Regional Investment Corporation to deliver Commonwealth farm business concessional loans and the National Water Infrastructure Loan Facility. The aim of the commitment is to consolidate loans expertise within the portfolio and streamline the administration of farm business loan arrangements to ensure they are delivered in a nationally consistent, cost-effective and efficient manner.



**Recommendation 28**

The committee recommends that the Australian government encourage the Western Australian and Northern Territory governments to consider possibilities for establishing a water market (including tradable water entitlements) for irrigation developments, including the Ord, in Australia's north. The information about foreign ownership of any water entitlements established under this regime should be included in the national foreign ownership register for agricultural land.

The Australian Government **supports** this recommendation.

The Government has established a National Water Infrastructure Development Fund and a National Water Infrastructure Loan Facility to assist states and territories fund the construction of major water infrastructure. The Government will 'give preference to water storage infrastructure, including the construction of dams and weirs that deliver broad public benefits, including through increasing regional water availability and security for water users'. The Government's aim is 'to support regional economic growth and development by providing secure and affordable water through co-investments with state governments (including the private sector) in economically viable water infrastructure that will be managed in accordance with the principles of the National Water Initiative'. The National Water Initiative requires the establishment of secure and tradeable water entitlements that are clearly and legally specified, monitored and enforced. The definition of entitlements involves an initial water resource assessment to establish a resource availability baseline.

The Government has established a national register of foreign ownership of water entitlements which commenced operations on 1 July 2017. It requires foreign persons who hold, or cease to hold, water entitlements anywhere in Australia to register their holdings with the ATO.

**Recommendation 29**

The committee recommends that the commonwealth, state and territory governments work together to consider appropriate policy options for consulting with FIRB in cases of proposals for significant foreign acquisitions from respective governments bodies.

The Australian Government **supports and has enacted** this recommendation.

In March 2016 the Government secured State and Territory support to amend the *Foreign Acquisitions and Takeovers Regulation 2015*, so that the Foreign Investment Review Board assesses the sale of critical state-owned infrastructure assets to private foreign investors.

On 23 January 2017 the Government announced the establishment of the Critical Infrastructure Centre (CIC). The CIC supports the foreign investment framework by facilitating more coordinated, comprehensive and timely national security advice to government. The Foreign Investment Review Board continues to assess and manage investment proposals on a case-by-case basis by using the input provided by the CIC.

## Response to the Dissenting Report's Recommendations

### **Recommendation 1**

The Government should continue to look at ways to ensure the community has more and accurate information about foreign investment, particularly in agricultural land.

In considering these initiatives, the Government should be careful to avoid disclosing private or commercially sensitive information or breaching Australia's international obligations.

The Australian Government **notes** this recommendation.

As part of the 2015 foreign investment reforms, the Government announced three registers to increase transparency around foreign ownership of Australian assets.

The *Register of Foreign Ownership of Agricultural Land Act 2015\** (the Register) was announced on 11 February 2015 and the first report was released on 7 September 2016. The first report of aggregated data collected through the Register includes a breakdown of agricultural land that is foreign owned by size, by state and territory, by land use and country of investor. The second report was released on 29 September 2017 and includes further breakdown of the level of foreign ownership by region.

The Commissioner of Taxation is required to report to the Treasurer on the operation of the *Register of Foreign Ownership of Agricultural Land Act 2015\** annually, as well as publish aggregate statistics on a website. The report must not release information which could be used to identify an individual or entity.

The *Register of Foreign Ownership of Agricultural Land Amendment (Water) Act 2016* further requires all water entitlements held by a foreign person must be registered. This register was in place on 1 July 2017. The Commissioner of Taxation will be required to provide a report on the findings of the Water Register after 30 June each year. This Report will need to be tabled in Parliament each year. This is consistent with reporting timeframe and approach taken for the *Register of Foreign Ownership of Agricultural Land Act 2015\**.

The Report will contain aggregated data about the water entitlements that are foreign owned by volume, state and territory, water source and country of investor. A similar level of detail is provided in the report compiled from the Register.

The Government also provided funding to the states and the ACT under a National Partnership Agreement to enable them to undertake system changes to transfer the data on sales and transfers of real property involving foreign persons to the ATO in order to establish a National Register of Foreign Ownership of Land Titles.

**Recommendation 2**

The Senate should pass unamended the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 to ensure that Australia's transfer pricing rules are robust and effective.

The Australian Government **supports and has enacted** this recommendation.

*Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013* received assent on 29 June 2013.

## Response to the Minority Report's Recommendations

### Recommendation 1

That the threshold for private foreign investment in agricultural land and water licences be lowered to \$5 million.

The Australian Government **does not support** this recommendation.

Lowering the threshold to \$5 million would put us in breach of our free trade agreement commitments.

The \$15 million screening threshold for agricultural land is cumulative. Once a foreign investor owns \$15 million of agricultural land, all subsequent purchases will be scrutinised regardless of the value. Bringing lower value properties into the FIRB net in the way suggested would involve scrutiny of smaller size properties that are not of particular interest which would unnecessarily increase compliance costs for investors and generate further administration costs for government.

All direct interests and land acquisitions by foreign government investors (regardless of origin) continue to be screened from \$0.

## Response to Senator Xenophon's Additional Comments

### **Recommendation 2**

At first instance Australia should adapt closely the New Zealand approach to foreign investment in agricultural land and assets which has proved to be more robust, transparent and accountable.

The Australian Government **notes** this recommendation.

The foreign investment framework seeks to strike an appropriate balance between maintaining community confidence in foreign investment, protecting the national interest and ensuring that Australia remains an attractive destination for foreign investment by providing certainty for investors.

Consistent with this objective, the Government reviews foreign investment proposals on a case-by case basis to ensure they are not contrary to the national interest. The case-by-case approach is a fundamental part of the foreign investment framework because the national interest can change over time.

In practice, the Government considers a range of factors when assessing foreign investment proposals (including national security, competition, taxation, impact on the economy and the community and the character of the investor). These are outlined in the Policy.

### **Recommendation 2**

The threshold for foreign investment in agricultural land and assets by non-state owned enterprises be reduced to \$5 million.

The Australian Government **does not support** this recommendation.

Lowering the threshold to \$5 million would put us in breach of our free trade agreement commitments.

The \$15 million screening threshold for agricultural land is cumulative. Once a foreign investor owns \$15 million of agricultural land, all subsequent purchases will be scrutinised regardless of the value. Bringing lower value properties into the FIRB net in the way suggested would involve scrutiny of smaller size properties, unnecessarily increasing compliance costs for investors and generating further administration costs for government.

All direct interests and land acquisitions by foreign government investors (regardless of origin) continue to be screened from \$0.

\* Now known as the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*.